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v 1 VIRGINIA AND MARYLAND CLAIM

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EVIDENCE

BEFORE THE

COMMITTEE ON CLAIMS

OF THE HOUSE OF REPRESENTATIVES

ON SENATE BILL 5252, SIXTIETH CONGRESS, FIRST SESSION  
TO PROVIDE FOR THE PAYMENT OF CERTAIN MONEYS  
ADVANCED BY THE STATES OF VIRGINIA AND MARY-  
LAND TO THE UNITED STATES GOVERNMENT TO BE  
APPLIED TOWARD ERECTING PUBLIC BUILD-  
INGS FOR THE FEDERAL GOVERNMENT IN  
THE DISTRICT OF COLUMBIA

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DECEMBER 16, 1908

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STATEMENTS OF

HON. CHARLES C. CARLIN

*A Member from the State of Virginia*

AND

HON. JOHN W. DANIEL

*A Senator from the State of Virginia*

AND

HON. ISIDOR RAYNER

*A Senator from the State of Maryland*

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COMMITTEE ON CLAIMS, HOUSE OF REPRESENTATIVES OF THE UNITED STATES, SIXTIETH CONGRESS

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WASHINGTON

GOVERNMENT PRINTING OFFICE

1909

[S. 5252. Sixtieth Congress, first session.]

AN ACT To provide for the payment of certain moneys advanced by the States of Virginia and Maryland to the United States Government to be applied toward erecting public buildings for the Federal Government in the District of Columbia.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the treasurer of the Mount Vernon Avenue Association, a corporation chartered and existing under the laws of the State of Virginia, the said Mount Vernon Avenue Association being the assignee of the State of Virginia under the provisions of a joint resolution of the general assembly of the said State of Virginia, approved on the 5th day of March, 1888, the sum of \$120,000, being the sum advanced by the State of Virginia to the United States under the provisions of an act passed by the general assembly of the State of Virginia on the 27th day of December, 1790, to be used toward erecting public buildings in the District of Columbia for the use of the Federal Government. And the payment of the said sum of \$120,000 to the treasurer of the Mount Vernon Avenue Association shall be in full satisfaction and payment of any and all debts, claims, or demands on the part of the State of Virginia or of her assignee, the Mount Vernon Avenue Association aforesaid, growing out of any money or moneys advanced, loaned, or paid out to the United States by the State of Virginia by virtue of the provisions of the said act passed by the general assembly of Virginia on the 27th day of December, 1790, or under the provisions of any other law, state or national, for the purpose of aiding in the erection of public buildings for the Federal Government in the District of Columbia.

SEC. 2. That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the State of Maryland, the sum of \$72,000, being the sum advanced by the State of Maryland to the United States under the provisions of a joint resolution passed by the general assembly of the State of Maryland on the 19th day of December, 1791, to be used toward erecting public buildings in the District of Columbia for the use of the Federal Government. And the payment of the said sum of \$72,000 to the State of Maryland shall be in full satisfaction and payment of any and all debts, claims, or demands on the part of the State of Maryland growing out of any money or moneys advanced, loaned, or paid out to the United States by the State of Maryland by virtue of the provisions of the said joint resolution passed by the general assembly of Maryland on the 19th day of December, 1791, or under the provisions of any other law, state or national, for the purpose of aiding in the erection of public buildings for the Federal Government in the District of Columbia.

SEC. 3. That this act shall be in force from the date of its passage.

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## VIRGINIA AND MARYLAND CLAIM.

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON CLAIMS,  
*Washington, D. C., December 16, 1908.*

The committee met at 10.35 o'clock a. m., Hon. James M. Miller (chairman) presiding.

The CHAIRMAN. The first matter coming up this morning is the bill introduced by Mr. Carlin, in which the State of Virginia seems to have some interest, and we will take that matter up now.

### STATEMENT OF HON. CHARLES C. CARLIN, A MEMBER FROM THE STATE OF VIRGINIA.

Mr. CARLIN. Mr. Chairman, at the time I asked the committee to hear this bill, I was not sure that Senator Daniel could be present. I find that he is, and I shall leave him to explain the bill more fully to you, and give you in brief my ideas of the facts and reasons for this bill.

There is a claim of the State of Virginia against the Federal Government for money loaned in 1790, through and upon the request of the then President of the United States, Mr. Washington. The claim has been considered a dozen times by various committees of the House and of the Senate and has been reported upon 9 or 10 times favorably by the committees of the House and of the Senate, as you will find upon page 3 of the present report of the Senate Committee upon that bill. It so happens that the committees have never managed to report at the same session of Congress; when the House would report favorably, the Senate did not report at all, and when the Senate reported the House did not, and the result has been that no action has been had upon the claim.

The money was loaned to the Government for the building of the public buildings in the city of Washington, and this money was actually expended, as the records will show, in and upon the present Capitol of the United States, the building which we now enjoy the use of. I was asked by the President of the United States why it was that Mr. Jefferson and Mr. Madison and Mr. Monroe had not collected this money for Virginia. The answer was very plain and simple, viz, that at that time Virginia was better able to wait for the money than the United States was to pay the money. Strange as this may seem, it was not until 1836 that this country had any surplus in its Treasury, and the panic of 1837 carried all the funds we had then out of the Treasury of the country, and it was not until 1842 that the United States could consider the payment of any of this debt. But in 1842 the demand was made for the payment of the

money by Maryland and Virginia, and the demand has been made persistently and consistently ever since.

There has never been a committee of this House or of the Senate that has ever denied the correctness and justice of the claim. It is admitted in every report of both branches of Congress, and yet the strange condition exists that Virginia has never been able to collect the money. Virginia finally, thinking that the Government would listen, perhaps, to some more patriotic expenditure of the money than the mere payment of a debt, assigned this claim to the Mount Vernon Avenue Association, which is composed of citizens of the highest standing and character of the State of Virginia, with the understanding that they should, when the money is received by them, build a memorial highway from Washington to the tomb of George Washington at Mount Vernon, a distance of 14 miles. I do not know that that will appeal to you, gentlemen, as any stronger reason for the payment of the claim than the mere fact that the Government owes the money and ought to pay it.

The question has been asked a great number of times whether Virginia and Maryland intended this money as a loan, or whether they intended it as a gift. All of the committees that have investigated the condition of affairs have reported that it was not a gift, but an advance.

Mr. TURRELL. Is there any document showing any receipt from the Government?

Mr. CARLIN. Yes, sir.

Mr. TURRELL. Have you a copy of that?

Mr. CARLIN. Yes; it is in the report. You will find on one of the pages of this report, where the President himself, Mr. Washington, inquired the method and the manner of settling this account between Maryland and Virginia, because he said in that report that the money had not been all expended for the purpose for which they had borrowed it.

The CHAIRMAN. What page is that?

Mr. CARLIN. Page 4.

Mr. TURRELL. The general assembly of Virginia passed an act for the purpose of giving money to the Government, I suppose; that is not disputed. Now, I want the receipt of the Government.

Mr. CARLIN. That will all appear in these reports. On page 8 of this report you will find, in a letter addressed to the Commissioners of the Federal District, under date of August 29, 1793, three years after the money had been borrowed, President Washington asked:

In what manner would it be proper to state the account with the States of Virginia and Maryland, they having advanced money which has not been expended on the objects for which it was appropriated?

In other words, they did not, as the President stated there, expend the money altogether for the purpose for which it had been appropriated, and he was at a loss to understand how the account should be stated between the two. There is absolutely no question but that Virginia paid the money.

Mr. SHACKLEFORD. The suggestion comes to my mind from reading this page 4: Out West, when we want a factory located in a town, or a county seat, or a university moved from one place to another, we propose if they will locate it in a certain locality, where we will be benefited by it, to make some advance to them for the purpose of in-



ducing the location of that particular institution in our midst, believing that by so doing, in advancing that amount of money, we will get it back in the advanced value of property, and the question has suggested itself to me, from reading page 4, that possibly Maryland and Virginia made these advances in order to secure the location of the capital and the erection of these buildings here because of the material benefit it would confer upon them.

Mr. CARLIN. I will answer that. Virginia wanted the capital, not at Washington, but she wanted the capital at Williamsburg, and it made an offer to give a large amount of money if the Government would locate the capital there. But it was not located there. After the refusal to accept that proposition, Virginia did say she would advance a certain amount of money if the capital were located on the Potomac, but in that instance it was an advance. In the other instance, had it been located where she wanted it, it would have been a gift. So there is no question but that that was the only consideration which induced Virginia to make this loan to the Government, to be paid in quarterly payments. The method of the payment will be found in the report. And I think that had a large influence with both Maryland and Virginia in securing the loan, the fact that the capital was to be located there. You will recall the fact that both Virginia and Maryland gave 10 miles square of their territory for the District of Columbia, and that was considered an abundant gift from each of those States for the location of the capital. The money inducement for the loan, I think, was largely the present location, but the money was never intended as a gift to locate it on the banks of the Potomac, because Virginia proffered and was willing to make a gift if the capital was located at Williamsburg, all of which appears in the printed report which you have before you.

There have been controversies between the two Houses as to what the word "advance" means. One minority report, and the only one that has ever been made by any committee, did state that the word "advance" in the act should be construed to mean a gift and not a loan. But that act was drawn by John Marshall, who knew the legal meaning of the word "advance" as well as any man could possibly have known the legal meaning of any word, and the decision of the Supreme Court of the United States, which is also referred to in the papers filed with the committee, shows that the word "advance" means a loan, and not a gift. So that has never been questioned but by one committee, either of the House or of the Senate, and yet there have been a dozen reports upon this claim. The fact is there is no excuse for the United States Government refusing longer to pay this claim. There is no man on earth who has ever been able to present a single argument against its payment. The fact is that these two sovereign States, Maryland and Virginia, have simply been juggled with, by accident in most cases and sometimes possibly by design—but if by design it was before I came upon the arena of the earth, and I only know that as a matter of reading the report which I have before me. Maryland is exactly in the same boat, with a claim of less amount. Virginia only agreed to advance this money in the event that Maryland would give an advance of \$75,000. The United States Government at that time wanted about \$200,000, and Virginia and Maryland, at that time being the best able of all the colonies to

make the loan, made it. And especially was it an extra inducement to Virginia, as has been stated, that at that time her own citizen, the President of the United States, was asking that the loan be made.

Mr. MOUSER. When was the first claim made for the payment of this claim?

Mr. CARLIN. Upon the first appearance of a surplus in the United States Treasury; in other words, the first time it appeared that the Government had any money, Maryland made the claim.

The CHAIRMAN. In 1842?

Mr. CARLIN. In 1842. In 1836 a surplus did appear for a few hours, but it soon disappeared by reason of the panic which followed it. But the two States promptly made this demand as soon as the Treasury of the United States gave any evidences of ability to respond.

Mr. MOUSER. Was there a panic following 1842?

Mr. CARLIN. I said 1837. It followed 1836.

Now, when you come to analyze this situation, Virginia to-day stands in the same patriotic position that she did when she made this loan. She does not ask that this money be returned to her treasury, but that it is to be used for a patriotic purpose, namely, the building of a memorial highway from Washington to Mount Vernon.

The CHAIRMAN. Maryland does ask to have this returned?

Mr. CARLIN. Yes. Senator Rayner is present, and will tell the committee what she desires to do with it. I think she is entitled to have it returned if she desires to use it in that way. Virginia desires to use it in a public spirit movement, in a memorial way, as it is stated.

Now, gentlemen, these are briefly all the facts there are in this case. The great wonder is that this Government has been willing to sit by so long and decline to repay this money. The matter was perhaps best stated by Senator Seward, of New York, in a paragraph which I will read, which answers all of the contentions of all parties with respect to this claim, particularly with respect to the contention that this money was an advance and not a loan, and I will read it to you in conclusion of my remarks.

Said Senator Seward:

Mr. President, the State of Virginia, beyond all doubt, contributed to the erection of this Capitol, and of these public edifices which we now use for the Government of the United States, the sum here specified. She either advanced that money as a loan, to be repaid at some future time, or she gave it to the Government of the United States. If this money was advanced as a loan, the advance created a debt, which it is now the duty of the Government to discharge. If, however, the money was contributed by way of gift or donation to the Government of the United States, I do not see that it materially alters the case. In the one case there would be an obligation already existing, a debt already to be paid, for money which has been borrowed. In the other case there is an advance, which is the basis of a moral obligation, which the Government may at any time recognize and assume, and that creates the debt. \* \* \* This moral obligation strikes me as peculiarly appealing to the sense of honor of the Government of the United States. We are here occupying an edifice which was in part built for us by the State of Virginia. She is comparatively poor; we are only too rich. I think it does not comport with the pride and dignity of the United States that Congress and the executive departments should occupy halls for which they are indebted in whole or in part to the generosity of the States. \* \* \* I am for discharging this obligation and securing to ourselves the right to feel that this Government owes nothing but gratitude to these States.



Gentlemen, that paragraph from Senator Seward states this case, and with this brief statement of the facts I will now ask the committee to hear the patron of this bill, the Senator from Virginia.

**STATEMENT OF HON. JOHN W. DANIEL, A SENATOR FROM THE  
STATE OF VIRGINIA.**

Mr. DANIEL. Is it the pleasure of the committee to hear me a few minutes? The basis of this measure, sirs, lies in a small compass. The meaning of the word "advance" is as well settled as any legal term we have to deal with, and it is plain in the statement set forth in this report, as to the basis of this advance to the Government, that it was used by an able lawyer, Chief Justice Marshall, who was then in the Virginia legislature, and who drew the measure and used it there with a view to its meaning. The Government was without funds, and it is with pride I remember that in all stages of the relations of Virginia with this Government the State of Virginia has acted on the liberal and patriotic side, and has never stickled as to any right of her own, or as to what posture she might occupy as to it, seeking at all times to do the patriotic, if not the generous, thing. The State of Virginia, when the civil war came on, had a fund of a hundred thousand dollars or more in the Treasury from the distribution of the public lands. She had never taken it because she did not believe in it, and she had always acted in all public matters according to her convictions. The moment that the State of West Virginia was organized by a counter revolution in the woods in West Virginia a messenger was sent post haste to collect the money. The State of Virginia has never been either exacting toward the Government nor prudent with respect to herself as to any claim against this Government whatsoever.

This is a legal claim. It could be recovered in any court that administers the common law, in an action of assumpsit, and is just as plain as any count for money had and received. It is very true that sometimes, by one public man or another, it has been called a loan. But look at the Century Dictionary, look at any legal dictionary, look at any well-established dictionary of the English language, and you see the meaning of the word "advance." It is a forwarding of money with the expectation and underlying thought of reimbursement. There is no doubt the money was received; there is no doubt it was expended upon the public buildings of this country; it is in hand to-day by the United States and used. All presumptions of law applying to the advance of money—the expectation of a return—from a small store account, in which a man goes in and takes up a box of matches or orders so many yards of calico, and goes out with the common understanding and expectation that he will pay for those goods which he gets and uses for his own benefit, to the largest transaction of business apply to this transaction. Now, that is this case.

A man may pick up the observation of some public man here and there, calling it a grant, or a loan, or calling it whatnot; but these are the facts, and the facts must determine the relative rights of parties, and not a speculative or casual sentence from one public person to another. They had no part in the procedure. They had nothing to do with the *res gestæ*. They know no more than anybody else may know about it; and there is a fact which speaks for itself,

that, using a legal term which means an expectation of reimbursement, the State of Virginia and the State of Maryland sent that money to this Government, which used it with great advantage to itself. The situation in this nation, of the fixity of the capital, and the obtaining of the land by George Washington, by the advancing of \$192,000 by Virginia and Maryland, realized to the Government much more than the money advanced, which went into the Treasury and was used by this Government. In the Forty-ninth Congress Mr. Seward, the then Senator from New York, spoke in the language respecting this claim which my friend the Representative of the Eighth District has uttered. There were other distinguished Senators who spoke on the subject. One was Senator Wade, of Ohio, and another was Senator Fish, of New York. Mr. Wade said:

The language connected with the original grant, which is sometimes called a "gift," sometimes a "donation," sometimes an "advance," sometimes one thing and sometimes another, would see to imply that it was not then expected the money would be repaid.

That, perhaps, is the best suggestion you can get from anybody that tries to argue that there is not an obligation upon the United States to return this money.

All these considerations, however, did not satisfy me that we ought not repay the money. I care but little what the expectation was at that time. If these States, actuated by magnanimity, and for the purpose of advancing the public good, gave us money to erect the public buildings at that stage, when our Treasury was comparatively empty, and when it was really an object to have such a donation, I would repay them.

Until 1860 the State of Virginia never had any embarrassment in its treasury or public funds. It was poor to what it was immediately afterwards. It borrowed \$20,000,000 for public uses, for building highways and railroads extending out into West Virginia, and it had money in hand. It refused to take the money lying in the Treasury on the distribution of the public lands. That was the attitude of this State and that was the attitude of this Government.

Now, nobody had ever stated any argument which would be respected by a chancellor in equity or by a judge of the common law, in a county, circuit, or other court, that the term "advance" does imply and import an expectation of reimbursement. I have looked at the dictionaries, but there is no use in going through their definitions. That is well known.

Now, this is over a hundred years that the Government has——

Mr. KITCHIN. But this ran for forty years of its life——

Mr. DANIEL. When a man gets rich he is glad to forget poverty, but the Government must put itself in the attitude in which it was——very much embarrassed, very much troubled, with a great, rich State right on its borders that wanted to and did help it as generously as any State ever did help the nation. The reason we are getting particular about the thing is because we are getting to understand and appreciate and value the principles of economy. We have had forty years to get our debts settled and to get a fixed *modus vivendi*. I am not complaining about that. We had our part in bringing it about; I am not trying to dodge it; but we have stood up to it both pecuniarily and morally, and with the instincts which I need not explain to any gentleman who sits upon this committee, for I see no one here who has not exactly the same instinct, both about his race and about his char-

acter. We are all alike in respect to that, and I think we are to be congratulated down in Virginia that to-day we have sunshine instead of shadow, and peace instead of strife, and a treasury that is paying its obligations as promptly and punctiliously as is the Treasury of the United States. But we have no money to give away. It has been by the greatest hardship and the closest economy and the gathering of all the money that we could lay our hands on properly that we have effected this great result.

Now, I ask you not to put us off to come back to some other Congress. These old things ought to be wound up. I have striven here for twenty years to get this bill through. Some one says he calls it a gift. Now, let anybody try to write out an argument that it was a gift. Virginia does not care very much whether you call it a gift or a loan. She has always acted toward this Government on the principle of noblesse oblige. It ought to be appreciated, and ought not to be forgotten, because the Government has gotten rich and the State of Virginia comparatively poor. Those are changes which will happen in the conditions of all men and of all nations. We are doing the best we can and we expect this Government to do the best it can. We have appropriated this money not to our treasury, but we want to join in building an avenue from Washington to the tomb of Washington.

Now, gentlemen, I might say a great deal more if you choose to go into the details of that matter, and I would be glad to answer any question which any one of you gentlemen may wish to ask. We have the documents which will prove all the positions which we state.

I am very much obliged to you, Mr. Chairman, and the members of your committee, for your courtesy.

The CHAIRMAN. At the time the legislature of the State of Virginia passed this legislation providing for the advance of this money was there any discussion, so far as you know, from what the record shows, as to what the appropriation was to be used for, aside from the language of the act itself?

Mr. DANIEL. I have not got the original act with me. I examined it at one time. When the measure was pending in the legislature, as the old journal shows, according to my present memory, Mr. Marshall arose and moved to insert the word "advance." Our legislative journals do not show the debates. But the word speaks for itself, and that is the point in this case that no man can get away from. If they had meant it they would have said it. There is a bill in which they provided earlier that upon the establishment of the capital at Williamsburg they meant to "give" there, and they said "give;" and when they meant advance, that was the exact, correct, technical term of law they should have used to do the thing which we contend they did. It is in expectation of the reimbursement of the funds, not then being in need, and Virginia waited upon a creditor who had reason to desire to be waited upon, and who was waited upon until the time came when Virginia thought her claim should be put forward. It is a matter of honor. There is not a gentleman in the world who, if he had to act in a case of his own like this, would hesitate a minute to draw his check. There is not a man who is worthy of the name of gentleman in this world that would take that money and use it with a term that imported the reimbursement of it, but that would be glad to reimburse it, and, as Senator Sumner said upon one occasion, "Honesty and justice were always things to be subserved." This

claim is absolutely just. The use of this money was of great benefit in itself and of great benefit immediately in the lots sold here, which came as a result of it.

STATEMENT OF HON. ISIDOR RAYNER, SENATOR FROM THE  
STATE OF MARYLAND.

MR. RAYNER. Mr. Chairman and gentlemen of the committee, there are one or two things in this record that have impressed themselves upon me very much, to which I would like to refer the committee. I started this business twenty-odd years ago in Congress myself, and I think I offered a bill along in 1887 or 1888 in the House of Representatives, and so far as I have been here I have been persistently urging it ever since.

I never had any doubts about the proposition that this was an advance. I do not see how it is possible to read the contemporaneous history concerning the measure and come to any other conclusion. It was not a donation. I never agreed with the proposition that it was a donation by the State of Virginia. If the State donated this money, then it is a matter within the bounty of Congress; but if not, then it is within the legal equity jurisdiction. I have always looked upon it certainly as an advance. Then the question is, what do you mean by advance? I have always looked upon it, that if a man should come to me poor and ask me for an amount of money, and I would give it to him, I would not ask him to make me a note for it and state a date for the payment. But I would expect the repayment. And the environment of this measure, both in the Virginia and Maryland legislatures, shows that these States expected repayment. I want to call your attention to one or two things.

THE CHAIRMAN. Suppose you were going to benefit greatly by the advance made to your friend, would you expect your friend to come back years afterwards, if your property had been increased greatly in value by reason of that advance, and repay you?

MR. RAYNER. But my property has not been increased in value. I do not admit that any property has been increased in value. What property has been increased in value?

THE CHAIRMAN. Don't you think the property of the State of Virginia has been largely increased in value by reason of the establishment of the capital of the United States here?

MR. RAYNER. I might admit that; but if I loan a man money, and afterwards some fortuitous circumstance takes place that increases the value of my property—

THE CHAIRMAN. But suppose you had advanced your money to some one who was going to start a manufactory that would give employment to a large number of men, which would advance very materially the value of your property, would you not feel that it was by reason of the procurement of that manufactory that your property had been increased in value, and—

MR. RAYNER. I would not feel like going back to him very much, but I would expect him to come back to me and pay it back.

Now, there is a very important matter here that I think has been overlooked. It always struck me as the most impressive point in this proceeding. On page 5 of this report, about the seventh or eighth line, you will see that this word "grant" was changed to



the word "advance" by the Virginia legislature. I want to call your attention to the legal aspect of this, because we must consider the circumstances connected with the title to the act as passed. This is the journal of the delegates of Virginia:

On the 24th December, 1790, the bill was introduced in the house of delegates of Virginia, granting to the President of the United States the sum of \$120,000 for erecting public buildings on the Potomac River agreeably to the resolutions of the last assembly. But the resolution (continues Mr. Rantoul) has been not to grant, but to advance \$120,000. Accordingly, on the passage of the bill, 27th of December, 1790, its title was amended so as to read "The act concerning an advance of money to the Government of the United States for public buildings."

Of course, we must look to the title of an act to explain what the act is, but the word "grant" will imply a donation, while the word "advance" implies a loan.

The whole action thus purports that this money was to be advanced by Virginia, and that her phraseology was not inadvertently chosen, but with special regard to its significance, appears from the amendment just stated. Indeed, it was not probable that Virginia, having for six years contemplated an advance of money to be refunded, would, in 1790, toward the close of that year, convert the sum promised advanced into a grant.

Now, in answer to a question that the committee asked, I want to call your attention to another fact, and that is this: That the law had been passed for the establishment of the public buildings here before Maryland made her grant. Looking at page 4, the resolution of the general assembly of Maryland is:

Whereas by a resolution of the general assembly of Virginia, passed on the 10th day of December, 1789, it was proposed to the general assembly of Maryland that the general assembly of Virginia will pass an act for advancing a sum of money not less than \$120,000 to the use of the General Government, and to be applied in such manner as Congress shall direct, toward erecting public buildings, the assembly of Maryland on their part advancing a sum not less than three-fifths of the sum advanced by the said general assembly of Virginia; which resolution came so late to the last general assembly of Maryland that it could not be acted upon, and was therefore referred to this present session; and

Whereas this general assembly doth highly approve of the object of said resolution, and is desirous of doing everything required on the part of Maryland for carrying the same into effect; on a second reading of said resolution.

*Resolved*, That this house doth accede to the proposition contained in said resolution of the assembly of Virginia, and will advance to the President of the United States, for the purposes mentioned in said resolution, the sum of \$72,000, payable to his order in three equal yearly payments.

If you will kindly look at the bottom of page 5, you will see what Maryland did.

Then on page 5 of the report you will find this:

It should be observed that no inadvertent use of phraseology betrays the general assembly in the above act to use any other words than "to be advanced." In the second volume of Scharf's History of Maryland, page 566, it is stated that the general assembly of Maryland, to secure the prompt payment of the sum advanced, authorized the treasurer of the Western Shore (at that early day the State had a treasurer for the Eastern Shore and another for the Western Shore) to sell the "reserved lands to the westward of Fort Cumberland," and also "the lands lying in Dorchester County and now in possession of the tribe of Choptank Indians, to sell and convey the right of this State to 100 acres of land at Fort Frederick, in Washington County." Thus Maryland sold some of her great coal fields to meet her advance to the United States for the first public buildings at the capital.

It has been argued that these States were moved to make the advances by the advantages which would follow from the location of the capital on the Potomac, and it has been also inferred that the advances were a "pecuniary

argument," which influenced the Congress to locate the capital on the Potomac.

No contemporaneous authority has been produced in any of the reports, as has been found by this committee, that shows that the Congress of the United States was made aware of the action of Virginia of the 10th December, 1789; and as that resolution was conditional upon Maryland's action, it is not probable that a conditional proposition, not accepted by Maryland, would be communicated to Congress by Virginia. Maryland did not respond to Virginia until November, 1790. The law locating the capital at Washington was approved July 16, 1790—four months before Maryland agreed to Virginia's proposition and six months before Virginia finally confirmed her first proposition to make an advance.

Now, only one other reference and I shall conclude. That is on page 8. I want to say, in passing, in reference to public roads in Maryland, that we are expending \$5,000,000 for public roads, and one of the roads is the boulevard from the city of Baltimore to the city of Washington. I suppose there is more being expended upon that road than upon any other in Maryland. I think the new boulevard is in use now for 15 or 20 miles between Washington and Baltimore.

Now, on page 8:

It was not an ordinary loan that Maryland was negotiating with the General Government. If it had been, a term of years would have been designated—

I will admit it was not "ordinary" more than in the legal acceptance of the term—that is, if there had already been indicia of a loan—

And the rate of interest which would accrue, but it was a generous offering from a patriotic State of the Confederacy to the young and distressed Government of the Union, whose finances were deranged and whose resources were undeveloped, with the implied understanding that the Government of the United States would reimburse Maryland whenever the former should recover from its financial difficulties and have the ability to do so. In such a transaction it seems to be clear that the State of Maryland would wait long and patiently before she would demand payment of the General Government—

The first effort that was made was made over seventy years ago, in 1842, by the general assembly of Maryland—

Since the advance itself was not an act of general confidence and patriotic liberality, it was not for her to obliterate the grateful recollection of the deed by an unkindly or ungracious demand.

I always in the House of Representatives and since then, planted myself upon the proposition that this was an advance by these States to the General Government, and, being an advance, that it is an equitable claim against the Government.

Now I believe—I am not prepared fully to express an opinion upon that—but I believe that if this was the case of an individual, and it was not barred by the statute of limitations, under the circumstances of this case there would be a right to recover. You gentlemen, members of the bar—and that just occurred to me while sitting here—know that an action for money had and received is an equitable action, and in a court of common law for an amount of money had and received you can recover money that was an equitable advance. In other words, you are not driven into a court of equity under an action for money had and received to recover money had and received. There is an equitable claim against an individual, and sometimes against the Government of the United States.

MR. SLACKLEFORD. I am not familiar with the history of the location of the capital, and without glancing at it further, can you tell the committee whether or not at the time of the location there were offers of various States and communities of different sums in the



way of donations or advances in the event the capital should be located in their midst? Germantown, for instance.

Mr. RAYNER. I am not sufficiently familiar, but in looking over the proceedings I did not find that there were any offers made, and I do not think there were.

Mr. KITCHIN. I think there was an offer from Pennsylvania, if they would locate it at Germantown. But the answer to this is that the act of the Virginia legislature making this advance was not passed until twelve months after the bill had passed Congress and had been signed, locating the capital on the Potomac River. The capital had been located before Virginia ever passed the act making this advance.

Mr. RAYNER. I find this on page 20:

Mr. Morris said the question was not understood and begun his explanations. He said he had often wished to explain himself on the subject of the residence, but was always prevented. That Pennsylvania was averse to the Susquehanna and would give \$100,000 to place it at Germantown.

The CHAIRMAN. What explanation have you to make of what the President means on page 8? It is the part where he says that a part of it was not expended for the purpose that was intended. He asks:

In what manner would it be proper to state the accounts with the States of Virginia and Maryland, they having advanced money which has not been all expended on the objects for which it was appropriated?

How much of this money was expended for building the capital and what has become of the other money?

Mr. RAYNER. It is not the balance that is spoken of. It says:

From this clause there is a clear inference that President Washington regarded this money as an advance, rendering necessary an account of it to be kept with those States. If it was a grant, gift, or donation, why keep an account with the States? But if it was an advance for a specific object, it was necessary to show that the money advanced for public buildings had not been expended on streets and other improvements.

In what manner, asked the President, would it be proper to state the accounts with the States of Virginia and Maryland, they having advanced the money? What is the use of keeping an account if they simply made a gift? In my judgment, I think the States expected this money to be paid back, and we are waiting for the time when the Government will pay it back.

Mr. TIRRELL. How much was advanced by the State of Maryland?

Mr. RAYNER. Seventy-two thousand dollars; in 1842 we started.

I should think the burden of proof would be on the Government to show it was a donation. *Prima facie*, it is an advance.

Mr. MOUSER. The question of the location of the capital had been fully and finally settled before this advance was made.

Mr. RAYNER. Six months before.

Mr. MOUSER. It could not be charged that that was the motive?

Mr. RAYNER. No; absolutely not. Because the resolution of the State of Maryland was not passed until December, and the location of the capital had been made in July.

Mr. WALDO. Virginia had offered a hundred thousand pounds if it was located at Williamsburg.

Mr. RAYNER. Yes, sir.

Mr. KITCHIN. With reference to the benefits that Virginia has got which you have referred to—

Mr. RAYNER. I would like somebody to point out what those benefits are. Lots of farms within 7 miles of the capital are selling for

\$30 an acre. The only advantage that Maryland has received is property is about twice as high in Washington as property in Baltimore. We have received no benefits. It has been an absolute injury.

The CHAIRMAN. I would like to state that if you were to move out into my country and have your railroad fare to Washington to pay, as we have to do and you have to do, you would find that it is a very great advantage to live in Maryland.

Mr. RAYNER. We are spending \$5,000,000 for these public roads, all for the benefit of Washington. The boulevard will not benefit us. It is building up the property all about Washington. I have driven on that boulevard for 15 miles, and it is building up a country that before that was a desert. I never saw anything like it. All the property out here is being improved, and we have not derived a particle of benefit from it, so far as the city of Baltimore is concerned.

Mr. SHACKLEFORD. I see Philadelphia's proposition is she would loan the Government \$100,000 if it was located at Philadelphia. I see some reference to it here in Mr. Maclay's journal. It says: "Mr. Langdon now moved a reconsideration to strike out the loan of the \$100,000." It seems some of them offered to donate \$100,000, probably Germantown, and it looks as if Philadelphia offered to loan. I do not know what the offer of Virginia was; it must have been for the purpose of superinducing a better offer.

Mr. CARLIN. The capital was finally located by a deal between Pennsylvania and Virginia and Maryland, whereby Pennsylvania, in the short turn, shall get the capital for ten years, and the Potomac get it for the balance of time. It was located there for ten years while these buildings were being constructed.

Mr. TIRRELL. Did Congress take any action at any time in regard to this alleged advance or loan?

Mr. CARLIN. No, sir; not at all. But the President of the United States took the cash. That is the record we have of it.

Mr. RAYNER. You must all realize that even if Congress did not take any action, this thing has been up for time immemorial, and the principal contention has been about the interest. I was in the Fifty-third Congress, or along there, and the controversy there was about the interest. You will find a long discussion there about the payment of interest. We would not have had very much difficulty if we had agreed to take the amount without interest at that time.

Mr. CARLIN. This bill does not provide for any interest. It simply provides for the payment of the principal sum. The interest would amount to something over a million dollars.

Mr. WALDO. Is not there anything in the debates of Congress at or about the time this money was advanced in regard to this money?

Mr. CARLIN. Not a word, so far as we have been able to find.

Mr. WALDO. Or as to the acceptance of the money, or what they were going to do with it?

Mr. CARLIN. There have been about 10 reports made by the various committees of Congress, and I do not find anything with reference to this money in Congress.

Mr. WALDO. There must have been some action on the part of Congress on the location of the capital.

Mr. CARLIN. Oh, yes.

Mr. WALDO. At that time wasn't there anything said about this action of Maryland and Virginia?

Mr. CARLIN. Not a thing. There was about Germantown and Philadelphia, but not about this.

Mr. KITCHIN. Is there anything in the Treasury Department, or in the records of the treasury department of the State of Virginia or the State of Maryland, showing that they kept this as an account against the Government?

Mr. CARLIN. Oh, yes.

Mr. KITCHIN. I mean immediately afterwards?

Mr. CARLIN. Yes, sir; the record shows, and shows the method of payment of the money. The Government got it in quarterly payments, and it shows who received it.

Mr. WALDO. How long has the Government kept that as an account due the State of Maryland?

Mr. CARLIN. She has kept it ever since she got it.

Mr. WALDO. Do the Treasury books show an open account there?

Mr. CARLIN. I do not know. The books of Virginia show it, and I am inclined to think the books of the Treasury Department will show it. I do not think I can give you that information, because the committee in signing the minority report referred to the fact that this account showed upon the government ledger and also showed that there were other accounts there, and they took the ground that it was a gift and not a loan. Nobody has ever doubted the fact that the money was paid.

Mr. SHACKLEFORD. Mr. Washington made a suggestion, or made a query, as to how it would be well to open up an account on the books, which would imply that up to that time there were no accounts.

Mr. CARLIN. The President asked the method of stating the account.

Mr. MOUSER. Do the journals of the legislature of Virginia show for what specific purpose this advance was made?

Mr. CARLIN. Yes; the journals of both States show that.

Mr. MOUSER. What was it to be used for?

Mr. CARLIN. For public buildings. President Washington three years afterwards seems to have discovered that although the Government got the money they had actually expended some of it for some other purpose, and he then asked how the accounts should be stated, because he stated the money had been used, or some of it, for some other purpose. This is a question of record; it does not have to rest upon the recollection of anybody. There is a record for every part of this transaction as far as records were kept in those days, showing first that the money was gotten, that the money was expended, and has never been paid.

The CHAIRMAN. Who received it?

Mr. CARLIN. The President of the United States. It was paid to the order of the President of the United States. The money was actually paid into the hands of the President of the United States. If there is any reason in the mind of any gentleman here that occurs to him why this claim should not be paid, who has a question he wants to ask about it, I would like to answer it, for the reason that no good reason has ever been given by anybody up to this time.

Mr. WALDO. I suppose two questions will arise. In the first place, whether this money was really for the purpose of getting the location of the capital upon the banks of the Potomac. If it was, then I sup-

pose they would be in the same position as cities in the West that pay a large advance to get a big manufacturing establishment.

Mr. CARLIN. I don't think there is the slightest doubt that one of the inducements of the loan—as this record says, Philadelphia offered to loan the money if the capital was located there. The capital of those days was not such a thing as it is now, and I do not believe any man living then ever contemplated such a thing as we have to-day. I believe one inducement Virginia had in making the advance was the location of the capital, but she did not look upon it as a gift.

Mr. MOUSER. But had the capital been located before the advance was made?

Mr. CARLIN. Yes; but the resolution was offered before.

Mr. WALDO. General Washington was a resident of Virginia, and he was probably able to look ahead and say to Congress that if the capital was located there his State would advance——

Mr. CARLIN. Do you think anybody could say what a state legislature would do?

Mr. WALDO. The one other question is, Whether there are not many other States that have claims that date back to about that time, perhaps not exactly of this nature, but somewhat of this nature, which will at once arise and come before this committee if we show a disposition to pay claims that are as old as 1790; and if so, whether this committee ought not to take that position—that is, the question as to whether claims of States against the Government as old as this ought to be taken up?

Mr. CARLIN. Is it the impression that the Government should take advantage of its own delay?

Mr. WALDO. Not at all; but as a general proposition; because if we report this claim favorably we are putting this committee and Congress, if it acts favorably upon it, in the position of saying that any claims for advances paid for other purposes—for Indian wars or for any other necessary national purpose—in 1790 shall now be taken up and considered favorably if such advance shall be proved to have been made.

Mr. CARLIN. This is the claim of a sovereign State. I doubt if there is any such other one in existence or any similar case in existence. If there be, they have never been asserted. This claim has been asserted for over fifty years.

Mr. RAYNER. There was no surplus at all in the Treasury of the United States until about 1836. Eighteen hundred and thirty-six was the first time there was any surplus in the Treasury at all. My recollection from reading is that that was followed by the panic of 1836, and there was no surplus in the Treasury until 1840, and immediately there was a surplus in the Treasury. Virginia and Maryland made their demands.

There is one point here I think is answered upon page 7, the first paragraph:

In relation to this measure Mr. Maclay raised his warning voice against yielding the Susquehanna, intimating that at the next session of Congress the seat of government would be fixed on the Potomac.

That was before any advance was made.

And at the next session, through an arrangement between Mr. Hamilton and certain Members from Virginia and Pennsylvania, the funding bill was passed, and also the bill fixing the permanent seat of government in the District of



Columbia. It does not certainly appear from the journal of Mr. Maclay that General Washington, as has been elsewhere intimated, interposed his influence in favor of the Potomac while the bill was pending before the First Congress; but it is not improbable that he expressed a preference for its location on the Potomac during the second session. Mr. Madison, however, appears to have been decided in favor of its location on the Potomac before General Washington was inaugurated.

Then, when the President was inaugurated, you will find this significant statement that has been referred to in his letter addressed to his commissioners of the federal district, written from Philadelphia in 1793, in which he asks in what manner would it be proper to state the account of the States of Virginia and Maryland. Was there anybody but thought and considered it an advance? He was not stating the account of the Federal Government as to its expenditures, but the accounts of the States of Maryland and Virginia.

MR. WALDO. Is not this what General Washington meant when he made that statement: Virginia and Maryland had agreed to advance, one \$72,000 and the other \$120,000, to erect public buildings. They had advanced the money, but General Washington had not used all of it for the purposes for which those two States advanced the money. Now, was not what General Washington meant to inquire whether that surplus, which was not used according to the agreement with the States, should not then be returned to the two States?

MR. CARLIN. Not at all. The language itself implies that all of it was used, but not all used for that purpose.

MR. WALDO. Did not he mean that the account should be stated showing that the Government owed Maryland and Virginia whatever of this amount they had not used for the purpose agreed upon? That, it seems to me, is what he meant.

MR. RAYNER. You see, that would change the whole nature of the transaction. That would only strengthen our position. That would make a conditional state of things. If it was a gift, it was an absolute gift. If it was an advance, it would have to be returned if it was not appropriated for the objects it was designed for.

MR. MOUSER. Might it not have been a gift for a specific purpose?

MR. RAYNER. It does not carry the idea of a gift at all. I do not think there is anything in that. You may look in vain for anything to show it was a gift.

THE CHAIRMAN. Have you any receipts showing who received this money?

MR. RAYNER. Yes; the record shows that the checks were drawn to George Washington.

THE CHAIRMAN. Did he sign as President?

MR. RAYNER. They were made payable to him as President of the United States.

THE CHAIRMAN. Might this not be a legitimate claim against the estate of George Washington? If so, there is a matter now coming before this committee asking that we reimburse the heirs of George Washington for the value of land over which Washington was permitted to locate land warrants under the laws of the State of Virginia, and he did locate them in the Miami Valley of Ohio. This land to-day is worth a hundred dollars per acre, and now the heirs are coming in and requesting, because these lands afterwards by the

State of Virginia were ceded to the General Government and the General Government issued other land warrants and other land warrants were located on the same lands and taken by other parties and patents issued, that now the heirs ought to be permitted to enjoy this benefit. And if so, there will be due the heirs of George Washington at least \$300,000.

Mr. CARLIN. We are willing to let that be treated as an offset against the interest of this claim, which we are not claiming.

Mr. SHACKLEFORD. It seems to me that it is not clear here, and it seems to me that it could be made clearer than it is. Undoubtedly the State of Virginia and the State of Maryland undertook to superinduce the location of the capital on the Potomac by proposing a gift or a loan—which?

Mr. KITCHIN. I do not think there is a doubt but that it was an advance and not a gift, and now the only trouble is to show that the money was actually used by the Government, and then I think the only thing is the age of the claim.

Mr. DANIEL. We have a fixed principle of law on the subject, the name of it is the common law. Sovereigns do not contemplate time as having any bearing upon their obligations. They themselves live forever. This government has lived so far, and it is likely to live in the contemplation of man; therefore governments are not like individuals, who die. The government lives forever. That is in title, a perpetual unity, unless we have some revolution according to a fashion which has instituted itself—and we have an impression we have had a disturbance of that sort. But the government lives forever. That is its decree as to itself, and that is the accepted version of the State. It is so with all sovereigns. You can not apply any rule that you might over individual relations to the transactions of a government. And there is one point in this case that no man can answer. It would make no difference if Washington had said this was a gift. He had no right to say it. He was not the one to interpret contracts. The contract must interpret itself, and the words of a contract prevail over any outside testimony. What was their contract? The contract of Virginia was to advance this money, and that is the end of it. The legislature can not testify against what it did. It is what it did that speaks. It is the act, and that is all of the case. If you consider "advance" to amount to something it does not mean in the dictionary, law, or otherwise, you can fritter the claim away. You can have a dozen suggestions as to what were its motives, but that does not make any difference. There is what it did, and the Government has preserved a memorial of it, and it acknowledges the fact, and if it was in a court the plea would be overruled and judgment entered for the plaintiff.

Mr. WALDO. There is no question about that, unless it was outlawed.

The CHAIRMAN. The question is whether, if the State of Virginia sleeps on its rights for fifty years, and then brings a claim of this kind to Congress and asks to have it paid, and a committee of Congress takes it up and considers the matter of payment, if we do it in one case, ought we not to do it in all that stand upon the same basis—

Mr. RAYNER. This claim was brought fifty years ago.

The CHAIRMAN. But that was fifty years after the money was paid over before any claim was made against the Government. It is not the proper thing for an individual to let whatever indebtedness may



be due to him run until the debtor dies and put it on the heirs fifty or one hundred years afterwards to pay the indebtedness which the debtor should have paid.

Mr. CARLIN. But the State of Virginia did not do it. A counter-claim was made as soon as the Government had means to pay the claim.

The CHAIRMAN. We would be glad to have you present anything else you wish to hereafter.

Mr. CARLIN. We hope that will not be necessary. We hope to have a report, and a favorable report.

The CHAIRMAN. In case we should decide to report adversely, would you prefer that we should make an adverse report to our making no report?

Mr. CARLIN. We would not.

(Thereupon, at 12 o'clock m., the committee adjourned.)

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